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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 1111

CALVIN FARRELL HADLEY,
Petitioner,

v.

STATE OF INDIANA,
Respondent,

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF INDIANA

BRIEF FOR RESPONDENT

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BRIEF FOR RESPONDENT

QUESTIONS PRESENTED FOR REVIEW

I. Whether the actions of the police officers in this cause violated Petitioner's rights regarding unreasonable searches and seizures as guaranteed by the Fourth and Fourteenth Amendments to the Constitution of the United States.

II. Whether the decision of the Supreme Court of In-

diana, in this cause, that the existence of probable cause based on hearsay justifies a warrantless search, must be reversed because the law of the State of Indiana *may* deny the issuance of a search warrant on probable cause supported by hearsay information.

III. Whether the actions of the police officers in this cause were based on reliable, corroborated information within the limits set by this Court.

IV. Whether the police officers in this cause were required to obtain a search warrant.

STATEMENT OF CASE

Respondent disagrees with certain of the facts set out in Petitioner's "Concise Statement of the Case," and sets out additional facts which Respondent feels are relevant to this matter.

The break-in was reported at 6:20 a.m. on June 19, 1966, to Officer Yeley (R.177) who arrived on the scene at approximately 6:25 a.m. (R.181) and investigated the breaking and damage (R.179). Captain Line arrived on the scene between 6:30 a.m. and 6:35 a.m. and also inspected the burglary (R.127). Line apprehended Petitioner about ten (10) minutes later (R.128).

While conducting an on-the-scene investigation, Officer Yeley obtained information from several eye witnesses to the events of that morning (R.181, 182). One, an unidentified person from the nearby Cummins Engine plant, yelled that he had seen three persons go into the plant (R.181), come out of the plant and go around the side of the building (R.182). A night watchman at Reeves

Pulley Co. also reported that he had seen three persons in and around the bulk plant (R.182). Roy Routier, a Cummins' employee who had been sitting in the Cummins' parking lot, reported that he had seen three persons coming out of the bulk plant (R.184), one of whom was carrying a typewriter (R.183). Routier pointed to the residence at 632 Maple Street and stated he had seen the same three persons enter that residence (R.183). On trial, Routier reasserted these facts and further testified that he had a clear and unobstructed view of the bulk oil plant and the residence at 632 Maple Street on the morning in question (R.255, 256).

According to Routier the conduct of the three boys was centered around the residence at 632 Maple Street. They took a typewriter around to the rear of the house, which they apparently entered for they were next seen coming out of the house when they proceeded to a car parked in the driveway behind the house and opened the trunk of the car. Then they came trotting back and disappeared behind the house again. (R.252, 254).

Armed with the knowledge of a break-in and the location of the suspects, the officers proceeded to the residence at 632 Maple Street (R.129) on the belief that they would find there the perpetrators of the felony (R.141).

Captain Line knocked on the front door for a few minutes, but received no response (R.124). However, while knocking at the front door Line did hear a response of some sort from the rear door (R.124). Whereupon Line proceeded to the rear of the residence and onto the back porch (R.124).

The police knocked at the back door for two to five

minutes before finally entering (R.147). While awaiting a response, one of the officers heard a voice from inside (R.158) and two of the officers heard a voice from within the residence say, "come in" (R.145, 157). The officers identified themselves as police before going into the residence (R.406).

While on the rear porch, seeking a response from within, the officers noticed a typewriter lying in open view in a closet on the back porch (R.139, 153, 158, 159, 185).

Upon entry into the residence, the officers proceeded directly to Petitioner's bedroom where they found Petitioner, partially dressed, feigning sleep (R.123, 147, 160), whereupon the officers arrested Petitioner (R.160).

SUMMARY OF ARGUMENT

The police officers in this cause had direct, first hand knowledge of the commission of a felony and reasonably believed the felons to be within the residence at 632 Maple Street. The police officers proceeded to the residence for the purpose of arresting the felons. The police officers acted reasonably in effecting an entry into the residence. Consequently, the typewriter must be regarded as the product of a discovery rather than a search.

Even if the police officers proceeded to the residence for the purpose of conducting a search, still, on the theory of "Hot Pursuit," the officers acted reasonably when they entered and searched the residence.

Whether the Law of the State of Indiana prohibits the issuance of a search warrant on probable cause if supported by hearsay is *not* the question. The sole question in

this cause is whether the actions of the police officers, whether regarded as pursuant to an intention to arrest or to search, contravene the requirements of the Fourth and Fourteenth Amendments to the Constitution of the United States. There is no Federal Constitutional error if the State of Indiana chooses to impose a higher standard for the issuance of a search warrant than for a warrantless search. The State of Indiana is free to set its own standards so long as these standards do not contravene the Federal Constitution.

The reliability and corroboration requirements pertaining to information obtained from paid informants or those in custody do not apply with equal force to eye-witness accounts from ordinary citizens.

And finally, The police officers in this cause were not required to obtain a search warrant.

REASONS FOR DENYING THE WRIT — ARGUMENT

I

THE POLICE OFFICERS HAD PROBABLE CAUSE TO ARREST PETITIONER. THEY RIGHTLY ENTERED THE RESIDENCE FOR THE PURPOSE OF ARRESTING PETITIONER AND THEIR ENTRY INTO THE RESIDENCE WAS REASONABLE UNDER THE CIRCUMSTANCES. EVEN IF THE POLICE OFFICERS ENTERED THE RESIDENCE FOR THE PURPOSE OF CONDUCTING A SEARCH, STILL, ON THE THEORY OF "HOT PURSUIT," THE POLICE OFFICERS ACTED REASONABLY.

The police officers had probable cause to arrest Petitioner. There can be no question but that a burglary had occurred and that the officers had direct, first hand knowledge of that burglary. Furthermore, three eye-witnesses to the chain of events on that morning reported to the officers they had seen three boys go into the bulk oil plant and later depart carrying a typewriter. One of the witnesses, Routier, reported in greater detail that he had seen these same three boys engage in deliberate, furtive conduct in and around the residence at 632 Maple Street and that he had seen these same three boys go into the residence at 632 Maple Street.

Regarding warrantless arrests, ". . . [P]robable cause exists where 'the facts and circumstances within their [the officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed". *Brinegar* v. *United States*, 338 U.S. 160, 175 (1949), quoting from *Carroll* v. *United States*, 267 U.S. 132, 162 (1925); accord *Stearsman* v. *State*, 237 Ind. 49, 143 N.E. 2d 81 (1957), cited with approval in *Moore* v. *State*, Ind.—223 N.E. 2d 899, 903 (1967).

This Court most recently applied this standard in *Sibron* v. *New York*, __U.S.__, 88 S. Ct. 1889 (1968) when this Court found that probable cause existed for the arrest of Peters', one of the parties. There this Court found that Peters' deliberate furtive action, the arresting officer's suspicion that an attempted burglary had been committed and the officer's knowledge relating Pet to the crime were proper factors to be considered in the decision to make the arrest.

In this cause, the officers had specific knowledge that

a crime had been committed, had specific knowledge regarding the perpetrators of the crime and had specific knowledge regarding their whereabouts. Therefore, the officers had probable cause to arrest Petitioner.

Armed with information disclosed by their investigation, the officers proceeded to the residence for the purpose of arresting Petitioner—and for that purpose only. There can be no question but that the officers were justified in effecting an entry into the dwelling occupied by Petitioner. "[I]t has been recognized from the early common law that such breaking is permissible in executing an arrest . . .". *Ker* v. *California*, 374 U.S. 23, 38 (1963). There, an unannounced entry into an apartment for the purpose of effecting the arrest of a felon was approved. See also, *Miller* v. *State*, 357 U.S. 301 (1958).

However, the right to enter a dwelling to arrest a felon is not the central issue. The question is whether " . . . the method of entering the home may offend constitutional standards of reasonableness. . . . ," as stated in *Ker* v. *California, supra*, at p. 38.

In this cause, the officers proceeded to the front door of the dwelling and knocked. Captain Line knocked several minutes but received no response. While knocking on the front door, he heard a response of some sort from the rear of the dwelling. Captain Line and several officers proceeded to the rear of the dwelling, walked onto the rear porch and knocked at the weather door in the rear for two to five minutes. While standing on the back porch, the officers identified themselves as police. Two of the officers testified they heard a voice from within the dwelling say "come in" before they entered. The officers opened the unlocked door, entered the dwelling and proceeded

directly to the bedroom where they arrested Petitioner on the spot.

That the officers did in fact testify that they heard a voice from within the dwelling say "come in," cannot be disputed. Furthermore, that testimony was uncontradicted.

Assuming, arguendo, the officers' entry was uninvited, still, the entry was reasonable in all respects. The officers made every attempt to arouse a response from within the dwelling for some five minutes. They identified themselves as police officers. They had probable cause to enter the dwelling for the purpose of arresting Petitioner. Should the officers have been denied entrance solely because of lack of a response from within? If so, would not any felon then refuse to respond, knowing an officer was denied entrance? Respondent respectfully argues that, absent a response from within, the officers were entitled to enter the dwelling, and that their manner of entry was reasonable under the circumstances. *Ker v. California, supra;* See also *Warden v. Hayden,* 387 U.S. 294 (1967).

The only additional act the officers could have performed would have been to announce their purpose. This was unnecessary. The Constitution does not require state officers to announce their purpose in seeking an entry under any and all circumstances. Failure to announce their purpose did not constitute a Constitutionally unreasonable entry under the circumstances of this cause. *Ker v. California, supra.* First of all, those cases requiring an officer to announce his purpose before effecting an entry were decided under a federal statute regarding entry to arrest. 18 U.S.C. §3109. They were decided under this Court's supervisory powers over federal courts and are limited to the actions of federal officers. *Sabbath v. United States,*

— U.S., —, 88 S. Ct. 1775 (1968); *Miller v. United States, supra.* And they do not necessarily apply to the actions of state officers. *Ker v. California, supra.* Futhermore, this Court, in *Miller v. United States, supra* by way of dictume, said:

> "It may be that, without an express announcement of purpose, the facts known to officers would justify them in being virtually certain that the petitioner already knows the purpose so that an announcement would be a useless gesture." (citing authorities) at page 310.

Although an issue might be made of the fact that the officers entered the back porch of the dwelling, rather than confining themselves to the entrance to the back porch, this does not affect the reasonableness of the subsequent entry into the dwelling. It should be noted that the officers in this cause began their effort to arouse someone within the dwelling at the front door. There the officers knocked for some unspecified number of minutes. The officers proceeded to the rear of the dwelling because they thought that they had heard something from the rear and because they had been unable to arouse a response from the front. It would be reasonable to infer that had Petitioner answered at the front, it would have been unnecessary to try the rear door at that particular moment. Having already failed to get attention at the front door, it was only reasonable to try the rear door. Arriving at the rear of the dwelling, the officers were apparently confronted with a screen enclosed porch. Having already failed to get a response at the front door, it was only reasonable for the officers to suppose that knocking on the screen door to the porch would have been a useless

gesture. The officers entry unto the rear porch for the sole purpose of arousing a response from within the dwelling by knocking at the weather door in the rear was reasonable under the circumstances.

The character of the rear porch in this cause is significant. If one might reasonably infer he was invited to go upon the porch for the purpose of knocking at the weather door, then the police officers in this cause were entitled to go upon the porch for the purpose of knocking at the weather door in order to arouse someone from within. There is absolutely nothing in the record to indicate that the rear porch in this cause was a private preserve of the owners or residents of the dwelling; there is nothing to indicate that the rear porch was not intended to be, or was not in fact, accessible to the public; and there is nothing to indicate that the porch was a constitutionally protected place. See *Katz v. United States,* __ U.S.__, 88 S. Ct. 507 (1967).

In *Katz v. United States, supra,* this Court said:

> "For the Fourth Amendment protects people, not places. What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection." (citing authorities), at page 511,
>
> * * *
>
> ". . . once it is recognized that the Fourth Amendment protects people—and not simply 'areas'—against unreasonable searches and seizures it becomes clear that the reach of that amendment cannot turn upon the presence or absence of a physical intrusion into any given enclosure." at page 512.

Consequently, the entry upon the back porch did not

violate any known Constitutional Right belonging to Petitioner.

Petitioner argued that the typewriter should have been excluded as evidence at his trial because seized pursuant to an unreasonable search and seizure in violation of his constitutional rights as guaranteed by the Fourth and Fourteenth Amendments to the Constitution of the United States. However, there was no search and the recovery of the typewriter must be regarded as the product of a discovery rather than the product of an unreasonable search and seizure. Consequently, the trial court was not required to exclude the admission of the typewriter into evidence against Petitioner.

The officers were at the residence for the sole purpose of effecting an arrest. The officers were entitled to enter the dwelling, and their method of effecting the entry was reasonable. The officers were definitely not on the back porch for the purpose of conducting a search. They sought entry only. Given this view of the cause the typewriter can only be regarded as the product of a discovery. See *Harris v. United States*, __ U.S. __, 88 S. Ct. 992, 993 (1968) where the court stated:

> " It has long been settled that objects falling in the plain view of an officer who has the right to be in the position to have that view are subject to seizure and may be introduced into evidence." See also, *Ker* v. *California, supra.*

Assuming, *arguendo*, the typewriter could be considered

the product of a search, still, a search and seizure is fully justified on the doctrine of "Hot Pursuit" enunciated by this Court in *Warden* v. *Hayden*, 387 U.S. 294 (1967).

The facts of *Warden v. Hayden, supra*, are quite similar to the facts in this cause:

> "About 8 a.m. on March 17, 1962, an armed robber entered the business premises of the Diamond Cab Company in Baltimore, Maryland. He took some $363 and ran. Two cab drivers in the vicinity, attracted by shouts of 'Holdup' followed the man to 2111 Cocoa Lane. One driver notified the company dispatcher by radio that the man was a Negro about 5'8" tall, wearing a light cap and dark jacket, and that he had entered the house on Cocoa Lane. The dispatcher relayed the information to police who were proceeding to the scene of the robbery. Within minutes police arrived at the house in a number of patrol cars. The officer knocked and announced their presence. Mrs. Hayden answered and officers told her they believed that a robber had entered the house and asked to search the house. She offered no objection." At page 297.
>
> * * *
>
> "The state postconviction court found that Mrs. Hayden 'gave the policemen permission to enter the home.' The federal habeas corpus court stated it 'would be justified in accepting the finding of historical fact made by Judge Sodaro on that issue . . . ,' but concluded that resolution of the issue would be unnecessary, because the officers were 'justified in entering and searching the house for the felon, for his weapons and for the fruits of the robbery'." At page 297, footnote 4.

Upon entering the residence in *Warden*, the officers im-

mediately made a thorough search of the dwelling. Hayden was found in an upstairs bedroom feigning sleep. However, he was not arrested until the other officers searching the house reported that there was no other man in the house. The principal issue was whether the officers in that case acted reasonably when they entered the house and began to search for the robber. This Court found that Hayden's Fourth Amendment Rights were not violated. Although the search was partially justified on the basis of the necessity to find and control all weapons, the search was also justified on the necessity to prevent the escape of Hayden.

The thread leading to Hayden's arrest was no greater than in our present case. There the cab drivers followed a man leaving the scene of an *apparent* robbery. There is nothing in the *Warden* decision to indicate that the cab drivers knew as a *certainty* that the man they followed did in fact perpetrate a robbery. All the cab driver could report was that the man he was following entered a particular residence. *Warden* does not specify the precise time lapse between the report of the robbery and the actual arrest of Hayden, but it appears that the time lapse in the cause now before this Court could not have been more than a couple of minutes longer than in *Warden*. Furthermore, in including the reasoning of the Federal District Court in the Habeas Corpus action, this Court approved the principle that an entry would have been justified even if it were forcibly effected after its refusal.

II

THE ACTIONS OF THE POLICE OFFICERS IN THIS CAUSE WERE PURSUANT TO AN INTENTION TO ARREST. BUT EVEN IF THE ACTIONS OF THE

POLICE OFFICERS IN THIS CAUSE WERE PURSUANT TO AN INTENTION TO SEARCH, THAT INDIANA LAW MAY PROHIBIT THE ISSUANCE OF A SEARCH WARRANT ON THE BASIS OF HEARSAY IS IMMATERIAL TO THE RESOLUTION OF THIS CAUSE. THE ONLY PROPER ISSUE IN THIS CAUSE IS WHETHER THE HOLDING OF THE SUPREME COURT OF INDIANA CONTRAVENES THE FOURTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES REGARDING A WARRANTLESS SEARCH AND SEIZURE.

Petitioner would have this court hold that his Fourth Amendment rights were violated solely because the law of the State of Indiana may prohibit the issuance of a search warrant on the basis of hearsay. However, the only question here is whether the search was within Constitutional limits set by this Court.

In passing upon an identical question in *Cooper* v. *California*, 386 U.S. 58 (1967), this Court said:

> "But the question here is not whether the search was authorized by state law. The question is rather whether the search was reasonable under the Fourth Amendment. Just as a search authorized by state law may be an unreasonable one under that amendment, so may a search not expressly authorized by state law be justified as a constitutionally reasonable one." At p. 61.

See also, *Beck v. Ohio*, 379 U.S. 89 (1964); *Kerr* v. *California, supra; Miller* v. *United States, supra.*

This court further said in *Cooper*, regarding California's harmless-error rule, that:

> "Our holding, of course, does not affect the State's power to impose higher standards on searches and seizures than required by the Federal Constitution if it chooses to do so. And when such state standards alone have been violated, the State is free, without review by us, to apply its own state harmless-error rule to such errors of state law. There being no federal constitutional error here, there is no need for us to determine whether the lower court properly applied its state harmless-error rule." At p. 62.

Consequently, the only proper conclusion on this issue is that the warrantless search, if search it was, approved by the Supreme Court of Indiana, was within the constitutional limits set by this Court and hence lawful, notwithstanding, that a search warrant *might* not have been available under Indiana law.

III

THE ACTION OF THE POLICE OFFICERS IN THIS CAUSE WAS BASED ON RELIABLE, CORROBORATED INFORMATION AND IN APPROVING THE ACTION OF THE POLICE OFFICERS IN THIS CAUSE, THE SUPREME COURT OF INDIANA DID NOT GO BEYOND THE LIMITS SET BY THIS COURT IN THE CASE OF WARRANTLESS SEARCHES.

Petitioner contends that the police officers in this cause initiated a search of the dwelling occupied by petitioner on the basis of heresay information which was not corroborated and which was from a source whose reliability had not been established by past performance.

Petitioner has misconstrued the law regarding the source

of information upon which a police officer may act. First, petitioner would apply the standards of *Draper* v. *United States*, 358 U.S. 307 (1959) to the sources of information in this cause. In *Draper* the information upon which the officer acted came from a paid informer. Along the same line, this Court in *Wong Sun* v. *United States*, 371 U.S. 471 (1963) decided that the officers in that case were not entitled to rely upon the untested and uncorroborated information obtained from an informant after his arrest. In both of these cases, the information on the basis of which the officers acted was from rather shadowy sources, a class of persons whose information is immediately suspect.

However, no such situation confronted the officers in this cause. The information upon which the officers acted came in part from several citizens who were eye witnesses to the events of that morning. The officers would have been derelict in their duty if they had ignored information volunteered by disinterested eye-witnesses to the events of that morning. Parenthetically, one of the parties volunteering information on that morning also testified against petitioner at his trial. As to corroboration, there was more than one witness who told the same story with respect to seeing the three (3) men on that morning. Also, the officer had first-hand knowledge that a crime had been committed. The information upon which the officers in this cause acted was reliable and corroborated. See *Warden* v. *Hayden*, *supra*, where this court decided that the officers in that case were justified in relying upon hearsay information volunteered by two (2) cab drivers, citizens who were eye witnesses to a portion of the chain of events in that case.

IV

WHETHER THERE WERE EMERGENCY CONDITIONS PREVENTING THE INVESTIGATING OFFICERS FROM OBTAINING A WARRANT IS NOT A QUESTION IN THS CAUSE. THE PRACTICABILITY OF OBTAINING A WARRANT HAS NEVER BEEN A CONTROLLING FACTOR.

Whether this Court regards the actions of the police officers in this cause as pursuant to an intention to arrest or to search, the result is the same. The relevant test is not whether it is reasonable to procure a search warrant but whether the search was reasonable. *United States* v. *Rabinowitz*, 339 U.S. 56 (1949). Furthermore, there can be no queston but that a police officer in the course of his duty may enter a private residence for the purpose of executing an arrest without a warrant, *Ker* v. *California*, *supra*, or for the purpose of conducting a search without first obtaining a warrant, *Warden* v. *Hayden*, *supra*.

CONCLUSION

The Petition for a Writ of Certiorari prayed for in this cause should be denied.

Respectfully submitted,

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